

SUMMARY ANALYSIS OF AMENDED BILL

Author: Walters Analyst: Anne Mazur Bill Number: AB 2326
 Related Bills: See Prior Analysis Telephone: 845-5404 Amended Date: May 3, 2006
 Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

SUBJECT: Amnesty Relief

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous
☒ analysis of bill as amended April 6, 2006.

☒ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the
 previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED

☒ April 6, 2006 STILL APPLIES.

☒ OTHER – See comments below.

SUMMARY

This bill would provide relief to certain taxpayers with respect to the 2005 income and franchise tax amnesty as follows:

1. Allow taxpayers to request Chief Counsel review for relief of the amnesty penalty if certain criteria are met.
2. *Provision deleted from bill.*
3. Eliminate the amnesty penalty on balance due amounts that are generated as a result of a post-amnesty change in interpretation or application of law.
4. Change the rate of interest for corporate taxpayers that filed protective claims in lieu of participating in amnesty so that any overpayment would bear the same interest rate imposed on underpayments.
5. Eliminate all or a portion of the amnesty penalty for taxpayers that made protective claim payments for anticipated additional post-amnesty tax liabilities.
6. Require the department to refund amnesty protective claim payments upon taxpayer's written request within 45 days of the request.

Board Position:

☒ S _____ NA _____ NP
 _____ SA _____ O _____ NAR
 _____ N _____ OUA _____ PENDING

Legislative Director

Date

Brian Putler

5/15/06

SUMMARY OF AMENDMENTS

The May 3, 2006, amendments made the following changes:

- Deleted the provision that would convert the existing post-amnesty penalty to increased interest for liabilities that become final after the end of amnesty.
- Added a provision requiring a process for taxpayers to request and receive a refund of protective claim payments.
- Made various technical changes to correct grammar, references, and other nonsubstantive errors identified in the bill as amended April 6, 2006.
- Added urgency language.

The added provision relating to the refund of protective claim payments is provided below. The April 6, 2006, analysis of the deleted provision no longer applies. The April 6, 2006, analysis of the unchanged provisions of this bill still applies. A revised Summary of Economic Impact is provided below.

EFFECTIVE/OPERATIVE DATE

As an urgency statute, this bill would be effective immediately upon enactment. Each provision would apply as of the date described in the analysis for the bill as amended April 6, 2006.

POSITION

Support.

On September 7, 2005, and December 7, 2005, the Franchise Tax Board voted 2-0, with the Director of Finance abstaining, to sponsor the provisions of the bill described in this analysis as provisions 1, 3, 4, and 5.

SUMMARY OF ECONOMIC IMPACT

Estimated Revenue Impact of AB 2326 Assumes Enactment After June 30, 2006 (in millions)					
	2005/06	2006/07	2007/08	2008/09	2009/10
1. Chief Counsel Relief of the Amnesty Penalty					
Reduction in penalties	– \$6	– \$6	– \$2	no impact	no impact
Return of Protective Claims and Future Revenue Offsets	– \$190	+ \$85	+ \$50	+ \$45	+ \$10
2. <i>Provision Deleted From Bill-</i>					
3. Amnesty Penalty Exclusion For Post-Amnesty Interpretation of Law	a/				
4. Interest Rate on Corporation Overpayments Same as Underpayments	– \$32	– \$40	– \$14	– \$9	– \$1
5. Post-Amnesty Penalty Relief For Taxpayers That Made Protective Claim Payments	– \$5	– \$5	– \$1	no impact	no impact
6. Return Of Protective Claim Payments Upon Request	no impact	no impact	no impact	no impact	no impact
Adjustments for Interaction of Provisions ¹	+ \$95	– \$38	– \$24	– \$22	– \$4
Total Revenue Impact of this Bill	– \$138	– \$4	+ \$9	+ \$14	+ \$5

a/ It cannot be predicted which, if any, laws or regulations will be re-interpreted in the future. Consequently, no revenue effect can be assigned to this proposal.

This estimate does not consider the possible changes in employment, personal income, or gross state product that would result from this bill.

Individual revenue discussions are included separately below for each provision.

¹ The revenue impact of each of the provisions included in this bill was estimated as if each were enacted independent of any other provision; however, if enacted together, the provisions interact with one another and impact the revenue estimate for the bill as a whole. For example, the provision that would permit Chief Counsel relief of the amnesty penalty interacts with both the provision that would increase the interest rate on corporate overpayments and the provision that would provide relief for taxpayers that made protective claim payments.

RETURN OF PROTECTIVE CLAIM PAYMENTS UPON REQUEST

EFFECTIVE/OPERATIVE DATE

As an urgency statute, this provision would be effective immediately and operative for requests made on or after date of enactment.

ANALYSIS

FEDERAL/STATE LAW

The federal American Jobs Creation Act of 2004 added Internal Revenue Code Section 6603, which among other things streamlined and simplified the federal system of applying advance tax deposits to suspend the running of interest. Accordingly, the Internal Revenue Service (IRS) recently issued procedures applicable to tax deposits made after 10/22/2004. These procedures include instructions for designating remittances as deposits, treatment of undesignated remittances, treatment of deposits made during an examination, treatment of deposits made after an examination, conversion of amounts previously deposited as cash bonds to tax deposits, requests for return of deposits and determination of underpayment interest where a tax deposit has been made.

These new procedures apply only to payments made for a tax year after a return is filed and before a final liability is assessed that are specifically designated as deposits. Payments made before a return is filed are estimated tax payments, on which the statute of limitations runs if no return is filed. Payments made after a final liability is determined are applied to the final liability according to normal payment allocation rules, normally to the year designated, then to the oldest year.

California law conforms to the new federal tax deposit rules and procedures as described in FTB Notice 2005-6.² This notice specifies that FTB will treat protective claim payments made under amnesty program instructions and taxpayer responses to tax deposit notification letters as written statements designating the advance payment as a tax deposit. Thus, protective claim payments, and the return thereof, are controlled by these new procedures. This notice also indicates that interest will be paid at the statutory overpayment rate on tax deposit amounts that are refunded without being applied to a final tax liability.

² AB 115 (Klehs, Stats. 2005, Ch. 691) amended section 19041.5 to repeal the cash bond provisions and incorporate the provisions of new federal "tax deposit" provisions by reference. These amendments provide that payments made during protest or appeal would be treated as deposits until the protested or appealed deficiency became final.

THIS PROVISION

This provision would require the department to refund or credit within 45 days of a written request any payment made by a taxpayer on or before April 1, 2005, that is not applied to satisfy a liability, including final deficiencies and self-assessed amounts. By its express terms, the provision would not prevent the imposition of the post-amnesty penalty.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would not significantly impact the department's programs or operations. Current department procedures accommodate refund requests as contemplated by this provision and process such requests within the proposed time frame.

FISCAL IMPACT

This provision would not significantly impact the department's costs.

ECONOMIC IMPACT

This proposal does not impact income tax revenues.

POLICY CONCERNS

This provision is declaratory of existing law and department procedures currently in place to return protective claim payments upon request by a taxpayer as contemplated by this provision.

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